Supreme Court, U.S.
FILED
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No. 04-1193

In The
Supreme Court of the United States

MARLENE MILLER GOLDS,

Petitioner,

v.

WILLIAM FRANKLIN GOLDS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of North Carolina

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. DID THE NORTH CAROLINA COURT OF APPEALS VIOLATE PETITIONER'S RIGHTS UNDER THE FOURTEENTH AMENDMENT BY UPHOLDING THE TRIAL COURT'S JUDGMENT WHICH WAS ENTERED BY THE TRIAL COURT OVER THREE YEARS AFTER THE LAST TESTIMONY WAS HEARD IN THIS CASE?

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

OPINIONS AND ORDERS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 11

APPENDIX:

OPINION OF THE NORTH CAROLINA COURT OF APPEALS, MAY 4, 2004 ..... App. 1

ORDER OF THE SUPREME COURT OF NORTH CAROLINA, OCTOBER 6, 2004 ..... App. 9

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS:

United States Constitution, Amend. XIV 2

North Carolina Constitution, Article I, sections 1 and 19 6

CASES:

Baker v. Baker, 102 N.C. App. 792, 404 S.E.2d 20 (1990) 10

Isley v. Brown, 253 N.C. 791, 793, 117 S.E.2d 821 (1961) 7

Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986) 7

Wall v. Wall, 140 N.C. App. 303, 536 S.E.2d 647 (2000) 9, 10

STATUTES:

28 U.S.C. § 1257(3) 1

North Carolina General Statute 1A-1, Rule 52 10

PETITION FOR WRIT OF CERTIORARI

Petitioner Marlene Miller Golds respectfully prays that a writ of certiorari issue to review the judgment and decision of the Court of Appeals of North Carolina entered on May 4, 2004.

OPINION AND ORDERS BELOW

Reproduced in the Appendix are the unpublished opinion of the Court of Appeals of North Carolina issued on May 4, 2004 (No. COA03-472), and the unpublished order issued on October 6, 2004 by the Supreme Court of North Carolina dismissing the notice of appeal as to substantial constitutional question and denying Petitioner's Petition for Discretionary Review of the decision from the North Carolina Court of Appeals (App. II).

JURISDICTION

Petitioner seeks review of the final judgment of the Court of Appeals of North Carolina issued May 4, 2004 and the opinion of that Court issued on June 8, 2004, Notice of Appeal of Substantial Constitutional Question being dismissed by the Supreme Court of North Carolina on October 6, 2004. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. XIV: No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On 17 November 1997 Respondent filed his complaint in Wilkes County District Court. Petitioner filed her Answer on 20 March 1998. An Equitable Distribution Pretrial Order was filed by the Honorable Edgar B. Gregory, Chief District Court Judge on 22 April 1998. Petitioner's Motion for Summary Judgment was filed on 10 August 1998. Petitioner's Summary Judgment Motion was denied on 30 September 1998 in open court by the Honorable Jeanie R. Houston, District Court Judge presiding, and the matter came on for hearing before Judge Houston at the 30 September 1998, 6 October 1998, 5 November 1998, and 11 March 1999 Civil Sessions of Wilkes County District Court. An Order Closing the file in this Case was entered by Judge Houston on 13 May 2002. A Judgment was subsequently filed in this case by Judge Houston on 15 August 2002. Defendant filed a timely Notice of Appeal to the North Carolina Court of Appeals on 13 September 2002. The North Carolina Court of Appeals upheld the trial court's judgment in an unpublished opinion dated May 4, 2004. The North Carolina Supreme Court dismissed Petitioner's Notice of Appeal of Substantial Constitutional Question on October 6, 2004.

Respondent and Petitioner were married on 20 September 1985. Respondent testified that he and Petitioner separated on 14 September 1991 and were divorced on 16 October 1992. No action for equitable distribution was filed by either party before the granting of their absolute divorce on 16 October 1992. Respondent's attorney wrote Petitioner on 6 April 1993 requesting "a settlement of marital property" between the parties. Respondent testified that he wanted to sell all the marital property and "split it right down the middle". Subsequently, Respondent filed the current action in 1995, took a voluntary dismissal on 7 October 1997, and re-filed on 17 November 1997, seeking return of the same items addressed as "marital property" in the 1993 correspondence and rescission of a deed from Respondent to Petitioner made some five years earlier. The case was removed from Superior court and placed in District court where the trial court Ordered that the parties complete equitable distribution exhibits to be exchanged prior to the equitable distribution trial between the parties. Though the trial court heard evidence for the last time on 11 March 1999, the Court did not enter its judgment until 15 August 2002, three years and five months after the final hearing.

Respondent admitted that he left the marital home in September of 1991. He testified that he did not make any more payments on the house after he left in September 1991. Respondent testified that after he left Petitioner, they never discussed reconciliation. Respondent further admitted he was served with the Divorce Complaint in 1992, and filed no answer.

Respondent testified that his signature appeared on the deed where he transferred his interest in the marital home to Petitioner which was signed on 22 May 1992. He

further admitted that he had an opportunity to examine the deed and ask questions about it before signing, he just failed to do so. Though Respondent claimed he thought he was signing a re-finance on the house, he admitted there was no bank name on the deed he signed, and he signed the deed in question without looking at it because he was "just in a hurry". Respondent admitted to seeing the house for sale in a local paper.

Gilbert Miller was called to testify by the Petitioner. He is the Petitioner's father. The furnishings in the marital home were given to Petitioner as a gift by him and his wife. He helped the couple out financially during the marriage and kept the marital home out of foreclosure proceedings on a number of occasions. In 1991, he paid their lender $5,955.73 to "catch up" their mortgage and avoid foreclosure. He also gave his daughter over $2,100 in 1990 to help her pay the mortgage. He was never repaid any of this money.

Mr. Miller further testified that he purchased the marital home out of the foreclosure sale, paid off the outstanding loans on the property and traded homes with another individual because the house would not sell. Mr. Miller testified that the house was in bad shape when he bought it out of foreclosure, he made numerous repairs including a new roof, fixing the swimming pool, and painting the house inside and out.

Petitioner Marlene (Golds) Dillard testified next. She testified that she and the Respondent were married in 1985. She testified that problems began between her and Respondent when she discovered Respondent had an affair during their marriage and discovered another woman's underwear in his truck. There was a mortgage on the

home that was re-financed through Surety Federal and an equity line was also taken out. Respondent testified that Petitioner left the marital home in September of 1991 and never came back. He did come back to pick up his clothes. She confirmed he made no further payments on the house after he left in 1991.

Petitioner detailed all the debt she was saddled with and had to deal with on her own when Plaintiff left the marital home. Respondent never returned his key to the house, and she never stopped him from coming back to the house after he left. Petitioner detailed the dire financial situation she and Respondent were in before separation. They sold many items of personal property to be able to pay their bills. The IRS was garnishing Respondent's wages for back taxes and he was not making enough to pay their bills. Petitioner was aware that the personal property was sold. His motorcycle and truck were picked up by his nephew after he left.

Linda Cook testified next. She worked as a Secretary for Parsons Trucking where Respondent worked and knew Respondent and Petitioner. She notarized Respondent's signature on the Deed transferring his interest in the marital home to Defendant in 1992. She recognized her signature and seal as the notary on the document. She does not remember anything out of the ordinary, and does not remember either Respondent or Petitioner being in a big hurry that day. It was not unusual for employees of Parsons such as Respondent to have her notarize something.

REASONS FOR GRANTING THE WRIT

I. THE ENTRY OF JUDGMENT BY THE TRIAL COURT MORE THAN THREE YEARS AND FIVE MONTHS AFTER IT HEARD THE LAST EVIDENCE IN THIS CASE VIOLATED PETITIONER'S RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

The trial court in the present case heard evidence on three separate occasions between 30 September 1998 and 11 March 1999. However, the trial court failed to enter the Judgment appealed from in this case until 15 August 2002, some forty-one months after last hearing evidence in the case. This delay in entering Judgment was a violation of Petitioner's Federal and State Constitutional Due Process rights.

Despite this egregious violation of Petitioner's Due Process rights, the Court of Appeals failed to overturn the trial court's ruling, stating prior cases which found Constitutional violations from much shorter delays (nineteen and twenty-four months) to be distinguishable. (Slip Op. at p. 8). These cases are not distinguishable, and most importantly, the Court of Appeals decision violates Petitioner's Federal and State Constitutional Rights. The North Carolina Supreme Court declined to review the decision by the Court of Appeals, dismissing Petitioner's Notice of Appeal of Substantial Constitutional Question and dismissing the Petition for Discretionary Review of the North Carolina Court of Appeals decision.

The Fourteenth Amendment to the United States Constitution as applied to the states and Article I, sections 1 and 19 of the North Carolina Constitution guarantee each citizen's rights to the Due Process of Law on both the

State and Federal level. In the present case, the unreasonable delay in entry of Judgment was extremely prejudicial to Petitioner and violated both her Federal and State Constitutional rights to Due Process. Respondent's claims were essentially for equitable distribution which seeks to wind up the marriage and distribute the marital property fairly with as much certainty and finality as possible. *Lawing v. Lawing*, 81 N.C. App. 159, 344 S.E.2d 100 (1986). At the very least, the trial Court's Judgment rescinded a deed entered into some ten years before the Judgment was entered, and distributed property or its "fair market value at the date of separation", which had occurred over eleven years before the entry of Judgment in this case. (Rp. 61-64)

Prejudice is shown as the Judgment entered by the trial court canceled in effect two conveyances of the former marital property subsequent to the deed in question. First, the deed from Petitioner to her father when he paid off the two mortgages that Respondent and Petitioner were liable for on the marital property and rescued the property out of foreclosure proceedings. Secondly, the conveyance from Mr. Miller to Robert Baldwin, an innocent bona fide purchaser, which occurred on 14 February 1994.

The law of North Carolina has long held "[t]here is no rule in our system of jurisprudence that has a greater tendency to maintain the stability of titles and the security of instruments than that which upholds the integrity of a solemn written deed." *Isley v. Brown*, 253 N.C. 791, 793, 117 S.E.2d 821, 823 (1961). In our case, the trial court's Judgment will in effect cancel three deeds and put the chain of title to the subject property in disarray. This delay has in and of itself prejudiced not just Petitioner but the innocent bona fide purchaser of real estate who

purchased what he believed to be good title over ten years ago based on "the solemn written deed" of record.

The trial court ordered return of Respondent's "separate" property, or in the alternative for Petitioner to pay Respondent the "fair market value of these items as of the date of separation." In addition to the trial court not assigning any fair market values to the property, the trial court requires the Petitioner through this Judgment to go back some twelve years to try and ascertain a fair market value for many items that neither party knows the whereabouts to.

Most importantly the delay prejudiced Petitioner in that it is evident that the trial court failed, because of the passage of time or for whatever reason, to fairly consider all the competent evidence before it in issuing its Judgment. The findings of fact, conclusions of law and decree were devoid of any of Petitioner's evidence or that from any disinterested witness which presented testimony or evidence critical of Respondent's claims. For example, the trial court accepted verbatim, without comment, Respondent's claims as to the items which were his "separate" property as included in his equitable distribution pre-trial exhibits. Included in this, was a 1970 pick-up truck, which Respondent admitted that his nephew had already picked up from Petitioner's house, and a 1990 pick-up truck which Respondent admitted was marital property.

Further, the trial court on its own motion ordered that this file be closed on May 13, 2002, before ever entering a Judgment in this case. This action taken over three years after the trial court heard testimony shows her mistaken belief that the matter was concluded, which it was not. The trial judge's notes, along with the entire file

in this case were missing for some period of time after the last hearing and before Judgment was entered. Though the file was eventually found, the trial judge's notes were not.

The unavailability of the trail court's notes from the hearing further makes it highly unlikely that the trial court could give fair consideration to all the competent evidence before it which was presented at trial almost three and a half years prior to the trial judge entering a Judgment in the case. The long passage in time, the file being missing for some period of time and the trial judge's notes being lost coupled with the drastic effect of this Judgment on Petitioner and the lack of any recognition in the Judgment that Petitioner's voluminous evidence and testimony were even considered by the trial court shows a violation of her Federal and State Due Process Rights.

The North Carolina Court of Appeals dismisses this unprecedented delay in entry of judgment as not violating Petitioner's Constitutional Rights because it stated this was not an equitable distribution case, and because the trial court asserted that it had listened to the tapes from the hearings, so it must have considered all the evidence before it. This reasoning does not pass Constitutional muster.

In *Wall v. Wall*, 140 N.C. App. 303, 536 S.E.2d 647 (2000), the North Carolina Court of Appeals reversed a trial court's distributional order in an equitable distribution case because of a nineteen month delay in entering Judgment. The *Wall* Court found that nineteen months was more than a *de minimis* delay in entering judgment and the delay required that the trial court receive more

evidence and enter a new distributional order on remand. *Id.* at 314, 536 S.E.2d at 654.

Likewise, in *Baker v. Baker*, 102 N.C. App. 792, 404 S.E.2d 20 (1990), the Court of Appeals heard an appeal wherein the defendant contended that the trial court could no longer accurately recall the evidence presented at a bench trial two years prior to entering judgment for divorce from bed and board and permanent alimony. On that basis, the Court of Appeals reversed the trial court and remanding for a new trial on all issues. *Id.* at 796. 404 S.E.2d at 23.

The present case presents a situation even more egregious than *Wall* or *Baker.* The delay was not nineteen months or two years but three years and five months. Despite the fact that the trial judge closed the file without entering judgment in May of 2002 and the trial judge's notes from the hearings held over three years ago were lost, she entered a Judgment without even holding a hearing or consulting both parties and their attorneys as was done in *Baker*. The Judgment reveals that the trial court failed to conduct its duties under G.S. 1A-1, Rule 52 and weigh all the competent evidence before it, as the Judgment contained virtually no reference to any testimony or evidence presented by Petitioner or any of the witnesses which were damaging to Respondent's case.

The unreasonable delay of three years and five months in entering Judgment in this case violated Petitioner's Federal and State Constitutional Rights of Due Process. Petitioner is entitled to a new trial on all issues for this Constitutional violation. The violation of Petitioner's Constitutional Rights also presents a question not addressed before by this Court.

CONCLUSION

For the reasons stated herein, Petitioner respectfully requests that this Court issue a writ of certiorari to review this decision of the Court of Appeals of North Carolina.

Respectfully submitted, this the 2nd day of March, 2005.

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NO. COA03-472

NORTH CAROLINA COURT OF APPEALS

Filed: 4 May 2004

WILLIAM FRANKLIN GOLDS,
Plaintiff,

v.

MARLENE MILLER GOLDS,
Defendant.

Wilkes County
Nov. 97 CVD 1946

Appeal by defendant from judgment entered 15 August 2002 by Judge Jeanie R. Houston in Wilkes County District Court. Heard in the Court of Appeals 13 January 2004.

Michael D. Duncan and Daniel S. Johnson, for plaintiff appellee.

James N. Freeman, Jr., and Dennis G. Martin, for defendant appellant.

McCULLOUGH, Judge.

This case arises out of a complaint seeking rescission of a deed based upon fraud and the return of separate personal property. The relevant facts are as follows: Plaintiff William Franklin Golds and defendant Marlene Miller Golds were married on 20 September 1985. The couple separated on 14 September 1991 and divorced on 16 October 1992. Plaintiff brought numerous items of separate personal property into the marriage. After the parties separated, plaintiff sought his separate personal property in the former marital home. Although plaintiff demanded the return of his property, defendant refused to comply. The parties maintained a close relationship following the separation. Defendant picked up plaintiff's

employment check on a regular basis and either cashed or deposited it in her bank account. Plaintiff, a long-distance truck driver, believed that there might be a chance of reconciliation because defendant visited with plaintiff after plaintiff returned from long trips for his employer.

The parties held title to the marital home as tenants by the entirety. In May of 1992, defendant came to plaintiff's place of employment and asked plaintiff to sign documents which defendant claimed were necessary to refinance the former marital home. Plaintiff had just returned from a long trip and was preparing to leave for another one for his employer. Defendant directed plaintiff to sign the back page without showing him the front page. Plaintiff testified that he relied on defendant's representations that the documents were to refinance the marital residence. Later, plaintiff learned that the document he signed was a general warranty deed conveying his interest in the former marital home to defendant.

Plaintiff filed a complaint seeking rescission of the deed based upon fraud and the return of items of his separate personal property. Defendant filed a motion for summary judgment on 10 August 1998, but that motion was denied. This matter was heard on 30 September 1998, 6 October 1998, 5 November 1998, and 11 March 1999. On 15 August 2002, the trial court ordered the return of several pieces of plaintiff's separate property and rescinded the warranty deed. The court further determined that plaintiff and defendant were owners of the real property as tenants in common.

Defendant appeals. On appeal, defendant argues that the trial court erred by: (I) denying her motion to dismiss and motion for summary judgment, (II) applying the

incorrect burden of proof, (III) finding that there was sufficient evidence to prove fraud, (IV) making findings of fact that were not supported by competent evidence, and (V) failing to issue a judgment in a timely manner. We disagree and affirm the decision of the trial court.

I. Motion to Dismiss and Motion for Summary Judgment

Defendant argues that the trial court erred in refusing to grant her motion to dismiss and her motion for summary judgment. Defendant's contention is that plaintiff's action should have been barred because it was an equitable distribution action that was brought five years after a divorce judgment had been entered. We disagree.

Under N.C. Gen. Stat. § 50-11(e) (2003), "[a]n absolute divorce obtained within this State shall destroy the right of a spouse to equitable distribution under G.S. 50-20 unless the right is asserted prior to judgment of absolute divorce. . . ." However, "equitable distribution is not the sole means of property division available to former spouses, nor is every action between former spouses regarding property rights an equitable distribution action." *Sparks v. Peacock,* 129 N.C. App. 640, 642, 500 S.E.2d 116, 118 (1998). Equitable distribution "does not displace the traditional principles of property ownership." *Hagler v. Hagler,* 319 N.C. 287, 290, 354 S.E.2d 228, 232 (1987). Thus, where there is not an equitable distribution, "the state of the title of property owned by either spouse or by both spouses is unaffected." *Id.*

In this case, the parties were divorced. However, plaintiff never filed a claim for equitable distribution. Instead, he sued for fraud and asked for the return of

several items of his separate property. Accordingly, defendant's assignment of error is overruled.

II. Burden of Proof

Defendant next argues that the trial court applied the incorrect burden of proof. We do not agree. Our Supreme Court has determined that in an action to set aside a deed, plaintiff's burden of proof is "the preponderance or greater weight of the evidence." *Walters v. Bridgers*, 251 N.C. 289, 296, 111 S.E.2d 176, 180 (1959). In the case at bar, plaintiff sought to set aside a deed based on fraud, and the trial court correctly utilized the preponderance of the evidence standard. Therefore, this assignment of error is rejected.

III. Proof of Fraud

Defendant contends that there was insufficient evidence to establish a claim for fraud. To establish a claim for fraud, the plaintiff must prove: "(1) [a] [f]alse representation or concealment of a material fact, (2) reasonably calculated to deceive, (3) made with intent to deceive, (4) which does in fact deceive, (5) result[s] in damage to the injured party." *Ragsdale v. Kennedy*, 286 N.C. 130, 138, 209 S.E.2d 494, 500 (1974) (citations omitted).

Here, plaintiff presented competent evidence showing that defendant brought him a document at his place of employment in May of 1992. Defendant told plaintiff that the document was to refinance the marital home, when in fact she knew that the document was a general warranty deed that would transfer plaintiff's interest in the property to her. This evidence indicates that there was a false

statement, reasonably calculated to deceive, and made with the intent to deceive.

The final two elements were also met. Plaintiff was deceived by these representations because he was induced into signing the deed. Finally, plaintiff was damaged because he conveyed all of his right, title, and interest in the marital home to defendant. Therefore, the trial court did not err in finding that plaintiff sufficiently alleged and proved fraud.

IV. Findings of Fact

Defendant also objects to the trial court's findings of fact. In a civil trial before a judge, the trial court's findings of fact are conclusive on appeal if they are supported by competent evidence, even if there might be evidence to the contrary. *Lyerly v. Malpass*, 82 N.C. App. 224, 225, 346 S.E.2d 254, 256 (1986), *disc. review denied*, 318 N.C. 695, 351 S.E.2d 748 (1987). "The trial judge weighs the evidence, passes upon the credibility of witnesses and the weight to be given their testimony, and draws the reasonable inferences therefrom." *Id.* at 225-26, 346 S.E.2d at 256. "If different inferences may be drawn from the evidence, he determines which inferences shall be drawn and which shall be rejected." *Williams v. Insurance Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975). The trial court sometimes makes findings of fact which resolve conflicts in the evidence; these findings are binding on appellate courts. *Id.*

In her brief, defendant makes a general objection to the trial court's findings of fact. She suggests that the findings "came directly from [p]laintiff's evidence" and failed "to even mention [d]efendant's evidence." We are not

persuaded by this argument. The trial court was presented with conflicting evidence and ultimately had to make some credibility determinations. The fact that the court found plaintiff's evidence to be credible, while finding defendant's evidence not to be credible, is not erroneous. The essence of the trial court's duty is to weigh the evidence and determine which inferences shall be drawn from the evidence.

More specifically, defendant objects to a portion of finding of fact 12: "After the parties divorced, the Plaintiff made a demand for the return of his separate property in which the Defendant refused to return these items." However, plaintiff's own testimony indicates that he asked defendant to return his separate property:

> Q. Now all these items we've discussed, have you requested that [defendant] return those items to you, basically your separate property?
>
> A. Yes.
>
> Q. And, has she –
>
> A. No, no, I was going to, all this furniture I was going to just divide down the middle, all the furniture I'd bought. I was just trying to –
>
> * * * *
>
> Q. Do you remember when the last time you made demand on her before you went to an attorney to seek some help in getting this property back?
>
> A. I think I saw Bill in '93. Probably '91 or '92.
>
> Q. And approximately how many times did you make a request from her to return these items?

A. Probably eight or ten.

Since there is competent evidence in the record supporting this finding, this assignment of error is rejected.

Defendant also objects to finding of fact 21 which stated that "There was no consideration in the Plaintiff conveying the deed of the Belle Meade residence to the Defendant." As we have already indicated, there was evidence in the record to suggest that plaintiff's signature was procured through fraud. Plaintiff testified that defendant asked him to sign some documents in order to refinance the home. Later, plaintiff learned that the document he signed actually conveyed his interest in the house to defendant. While we acknowledge that there was some evidence going the other way, plaintiff's testimony is competent evidence that supports finding of fact 21.

V. Failure to Issue a Judgment in a Timely Manner

Defendant's final argument is that her due process rights were violated by the delay in the issuance of judgment. We see no merit in this contention because the cases defendant cites are distinguishable from the case at bar.

First, defendant mentions an equitable distribution case in which we found that a nineteen-month delay between trial and judgment was inconsistent with the goal of distributing the marital property with as much certainty as possible. *Wall v. Wall,* 140 N.C. App. 303, 314, 536 S.E.2d 647, 654 (2000). Since the present case is not a claim for equitable distribution, we are less concerned about winding up and distributing marital property. Once

again, this claim was limited to setting aside a deed and returning items of separate property.

Second, defendant cites a case in which the long delay between the trial and the entry of judgment prevented the trial judge from accurately recalling the evidence. *Baker v. Baker,* 102 N.C. App. 792, 794, 404 S.E.2d 20, 21 (1991). In that case, we reversed the trial court and remanded for a new trial. *Id.* at 797, 404 S.E.2d at 23. However, the trial judge in the case at bar had no trouble recalling the evidence. In fact, prior to entering judgment, the trial court reviewed and listened to the tapes from all of the hearing dates. This measure provides assurance that the trial court considered all of the evidence and entered its judgment accordingly. We have considered defendant's remaining arguments and find them to be unpersuasive. After a careful review of the record and the arguments of the parties, the trial court's order is

Affirmed.

Judges WYNN and TIMMONS-GOODSON, concur.

Report per Rule 30(e).

No. 271P04 TWENTY-THIRD DISTRICT

SUPREME COURT OF NORTH CAROLINA

****

(*William Golds v Marlene Golds*)

WILLIAM FRANKLIN GOLDS

v

MARLENE MILLER GOLDS

From NC Court of Appeals
(COA03-472)
From Wilkes
(97CVD1946)

****

ORDER

Upon consideration of the notice of appeal from the North Carolina Court of Appeals, filed by Defendant on the 7th day of June 2004 in this matter pursuant to G.S. 7A-30 (substantial constitutional question), the following order was entered and is hereby certified to the North Carolina Court of Appeals: the notice of appeal is

> **"Dismissed ex mero motu by order of the Court in conference, this the 6th day of October 2004.**
>
> **s/ Brady, J.**
> **For the Court"**

Upon consideration of the petition filed on the 7th day of June 2004 by Defendant in this matter of discretionary review of the decision of the North Carolina Court of Appeals pursuant to G.S. 7A-31, the following order was entered and is hereby certified to the North Carolina Court of Appeals:

"Denied by order of the Court in conference, this the 6th day of October 2004.

s/ Brady, J.
For the Court"

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 13th day of October 2004.

Christie Speir Cameron
Clerk, Supreme Court of North Carolina

/s/ Shaula A. Brannan
Shaula A. Brannan
Assistant Clerk

[SEAL]

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